

Following the above case I am of the opinion that the defect in the present case cannot be cured by invoking the provisions of section 131 of the Bankruptcy Ordinance which is in *pari materia* with section 143 sub-section (1) of the Bankruptcy Act 1883.

That being so, I uphold the objection taken by the debtor and dismiss this petition with costs.

Petition dismissed.

Solicitors: C. J. Koh & Co.; Donaldson & Burkinshaw.

REMBHA BAI & ANOR. v. JASANI

[C. A. (Thomson C.J., Rigby and Ong JJ.)
December 13, 1960]

[K. L. — F.M. Civil Application No. 2 of 1960]

Practice and Procedure — Court of Appeal — Extension of time — Appeal in forma pauperis — Notice of Appeal should be given without waiting for result of application to proceed as a poor person.

Where a party desires to appeal against a judgment of the High Court and also wishes to secure leave to appeal in *forma pauperis* the proper course is to give Notice of Appeal within the prescribed period without waiting for the event of his application to proceed as a poor person.

The period for filing is limited on the strongest grounds of public policy expressed in the maxim *sit finis litium*.

Case referred to:—

- (1) *Addison v. Addison & Holden* [1960] 1 W.L.R. 1088; [1960] 3 All E.R. 187.

COURT OF APPEAL.

H. B. Ball for the applicant.

Respondent absent.

Thomson C.J. delivering oral judgment: This is an application for extension of time within which to file Notice of Appeal against a judgment of the High Court. The ground on which extension is asked for is that the applicant is said to be a poor person and has been engaged in securing leave to appeal in *forma pauperis*.

We are going to grant the application, which is not opposed, by giving her time till 31st December but we wish to express the view, following what was said by the Court of Appeal in England in the case of *Addison v. Addison & Holden*⁽¹⁾, that in such a case the proper course is to give Notice of Appeal within the prescribed period and not await the event of any application to proceed as a poor person.

The period for filing is limited on the strongest grounds of public policy expressed in the maxim *sit finis litium*. The actual expense of giving Notice of Appeal is trivial and public policy demands that a successful litigant should have notice within the time prescribed by law that his position may be challenged.

Application allowed.

Solicitors: Allen & Gledhill.

LIEW KALING & ORS. v. PUBLIC PROSECUTOR

[C. A. (Thomson C.J., Hill J.A. and Hepworth J.)
December 14, 1960]

[Penang — F.M. Criminal Appeal No. 20 of 1960]

Criminal Law and Procedure — Murder trial — Joinder of several capital charges — Undesirable.

Evidence — Conspiracy to commit murder — Evidence Ordinance, 1950, s.10 — Inference — Two conditions must be complied.

Quantum of proof — "Beyond reasonable doubt" — Test of "proved" under s.3 of the Evidence Ordinance — Direction to jury — Use of analogies.

The trial together of more than one charge of murder is undesirable.

The words of section 10 of the Evidence Ordinance are not capable of being widely construed so as to include a statement made by one conspirator, in the absence of the other, with reference to past acts done in the actual course of carrying out the conspiracy, after it has been completed. *Mirza Akbar v. King Emperor* (3) applied.

It is open to the jury to draw inferences from particular pieces of evidence, but it must be explained to them that before an inference can be regarded as a valid one it must comply with two conditions:

- (i) it must account for all the known facts; and
- (ii) it must be the only reasonable inference which will account for all these facts.

In many cases it is not necessary to give such a caution to the jury but in a case where the prosecution evidence consisted of a somewhat meagre body of primary facts from which the jury were asked by the prosecution to draw a number of inferences of the utmost gravity it would have been safer to give some guidance as to the principles of ratiocination which were applicable.

In any criminal case the onus lies upon the prosecution to prove that the accused person is guilty of the offence charged against him or of some other charge for which he can be lawfully convicted on the charge against him. The test of "proved" is the test of the prudent man according to "the circumstances of the particular case". It is undesirable to read section 3 of the Evidence Ordinance to the jury. The jury must be satisfied "beyond reasonable doubt". There is no set formula required. The degree of proof "need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt . . . If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable', the case is proved beyond reasonable doubt, but nothing short of that will suffice." *Müller v. Minister of Pensions* (9) followed.

Cases referred to:—

- (1) *Chew Ming v. Public Prosecutor* [1960] M.L.J. 11.
- (2) *Rex v. Davis* 26 Cr. App. R. 95; [1937] 3 All E.R. 537.
- (3) *Mirza Akbar v. King-Emperor* 67 I.A. 336, 348; 190 I.C. 233; I.L.R. 1940 Kar. 302; 43 Bom. L.R. 20; 73 Cr. L.J. 252; 45 C.W.N. 269; I.L.R. 1940 Lah. 612; [1940] 2 Mad. L.J. 811; A.I.R. 1940 P.C. 176.
- (4) *Rex v. Grondkowski* [1946] 1 K.B. 369, 372.
- (5) *Lawrence v. The King* [1933] A.C. 699, 707.
- (6) *Rex v. Horry* [1952] N.Z.L.R. 111.
- (7) *Kritz* 33 Cr. App. R. 169, 177.
- (8) *Ismail bin Abdullah v. Public Prosecutor* [1959] M.L.J. 269, 270.
- (9) *Miller v. Minister of Pensions* [1947] 2 All E.R. 372, 373.
- (10) *Podmore's case* 22 Cr. App. R. 36.